IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

W.P.NO.9780 OF 1995
and
W.P.14027 OF 1996

W. P.NO.9780 of 1995

1. T.V. Gopalan
2. R. Valamathy
3. S. Jeevakani
4. M. Kadasari
5. Olive Roshini Jayanthi
6. J. Beula Mercy
7. N.R. Kousalya
8. Yogalathamangesh
9. T.K. Swaminathan .. Petitioners

-Vs-

1. The Government of Tamilnadu,
rep. by its Secretary,
Education, Science and Technology,
(H.S.II) Department,,
Fort St. George,
Madras 9.

2. The Director of School Education,
Madras 6.

3. The Director of Teacher Education,
Research and Training,
Madras 6.

4. The Correspondent,
M.N.U. Jayaraj Nadar Higher
Secondary School, Nagamalai,
Madurai 19.

5. The Correspondent,
M.A.N.U. Girls Higher Secondary

School, Usilampatty,
Madurai District.

6. The Correspondent,
T.E.L.C. Girls Higher Secondary
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7. The Correspondent,
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S.K.A. Higher Secondary
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11. The Correspondent,
Sourashtra Girls Higher Secondary
School, Anupandy Road,
Madurai 9.

12. The Correspondent,
Surashtra Boys Higher Secondary
School, 110, Kamaraj Salai,
Madurai 9. .. Respondents

W.P.No.14027 of 1996

1. S. Thavasilingam
2. S. Selvaraj .. Petitioners

Vs.

1. The Government of Tamilnadu,
rep. by its Secretary,
Education, Science and Technology,

(H.S.II) Department,,
Fort St. George,
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2. The Director of School Education,
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3. The Director of Teacher Education,
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Madras 6.

4. The Correspondent,
A.V.D Higher Secondary School,
Ganapathypuram,
Kanyakumari 629 502. .. Respondents

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Rajkumar
in WP.9780/95

For Petitioners
in WP.14027/96 : Mr.M. Muthappan

For Respondents : Mr.V.R. Rajasekaran
Special Govt. Pleader (Edn)

:COMMON ORDER

(Order of the Court was made by P.K. MISRA, J.)

Prayer in these writ petitions is to issue writ of certiorarified mandamus to quash 4(vi) and 7 of G.O.Ms.No.834 Education Science and Technology (HS.II) Department dated 23.9.1994 and the proceedings of the Director of Teacher Education Research Training, Madras 6 in R.C.No.8904/B3/94/DTERT dated 26.6.1995 and to direct the respondents to regularise the petitioners as vocational instructors with effect from the date of their first appointment and fix the time scale of pay on par with B.T. scale with effect from 1.4.1990 and to pay all the arrears and to extend all consequential service benefits.

2 . These two writ petitions have been filed by the so called unqualified vocational teachers.

The State Government under G.O.Ms.No.17 19 dated 14.9.1978 introduced vocational courses at Higher Secondary stage. The Government has decided that part time instructors may be employed for handling vocational courses on payment of consolidated remuneration of Rs.150/- per month. In course of time, the Government also took a decision that a second part time instructor may be engaged separately on payment of Rs.150/- per month and if the part

time instructor was not available, the part time instructor already engaged may be allowed to handle more than 20 periods on remuneration of Rs.300/-per month. Such part time instructors who were instructed to take 20 or more periods came to be known as double part time vocational instructors and others were known as single part time vocational instructors.

3. At the time of introduction of the scheme under G.O.Ms.No.1719 dated 14.9.1978, certain qualifications had been prescribed for the appointment of vocational instructors. It was indicated in para 8 of the said G.O., that to the extent possible, persons possessing the qualifications mentioned in the Annexure to these orders shall be appointed. Subsequently, by proceedings dated 11.7.1984 , the Director of School Education brought to the notice that :
 the Departments concerned without understanding the spirit of the Government orders go by words of the G.O. and decline to permit the staff required by the schools for the simple reason that the persons concerned do not hold the prescribed qualification. It is a known fact that for handling the vocational courses fully qualified persons may not always be available particularly in rural areas. So, heads of institutions have to account for talents in the locality unmindful of the lack of educational qualification prescribed in the rules. It is the proficiency gained over years of service in the field and the enthusiasm and interest evinced by the experts in the area which counts a lot for drawing them to teach the vocational classes. While reiterating the earlier Govt. orders, I am to request you that where fully qualified persons are not available, technically qualified persons with proficiency in the subjects with rich experience may be spared as and when requests are received from Heads of Higher Secondary Schools without laying emphasis on the educational qualifications possessed by them.

4. On the basis of such instruction, many persons like the petitioners, even though not holding the full qualification as envisaged under G.O.Ms.No.1719, were appointed as part time vocational instructors. It is claimed by the petitioners that even at the time of appointment, exemption had been granted in the appointment order itself and thereafter posts were given to such appointees. While the matter stood thus, on the basis of the representation made by many part time vocational instructors, the Government in G.O.Ms.No.712 dated 28.5 .1990 decided to regularise the services of 1837 double part time vocational instructors over a period of two years from 1990-91 onwards and accordingly initial sanction was accorded for creation of 800 posts of vocational instructors in the Higher Secondary Schools in the pay scale of Rs.1400-40-1600-50-2300-60-2600 (equivalent to B.T time scale of pay). Subsequently, G.O.Ms.No.967 dated 16.10.1992 was issued under which 587 fully qualified double part time vocational instructors have been regularised in the said B.T. scale of pay. The relevant portion of the aforesaid G.O. is to the following effect :-

 . . . The Director of School Education has recommended for creation of 1037 posts of vocational instructors in the scale of pay of Rs.1400 -2600. Since the 450 vocational instructors, eventhough not qualified but are qualified by virtue of their 10 years experience to handle the vocational subjects, he has therefore, recommended for relaxation of the

required qualification.

3. . . .

4. Government examined the matter carefully based on the recommendations of the Director of School Education they have decided:

a) to bring 587 fully qualified double part time teachers into regular scale of pay.

b) unqualified 450 double part time teachers may be trained and absorbed in the regular scales of pay.

c) to bring all qualified single part time teachers into existing/sanctioned secondary grade posts and

d) other unqualified single part time teachers may be given training and absorbed as secondary grade teachers in future.

5. In accordance with the aforesaid G.O., 587 fully qualified double part time vocational instructors were also inducted into B.T. scale of pay. However, it appears that O.A.No.3280 of 1992 was filed contending that there was no justification to ignore the single part time vocational instructors. The Tribunal by its order dated 18.6.1993, found that there was no justification to treat the single part time teachers on a different footing. Ultimately, it was observed as follows :-

 . . . In such circumstances, the proper course would be to appoint in the time scale posts persons with reference to their seniority based on the date of appointment as part time instructors irrespective of whether they are working as double part time or single part time. When a person on the time scale is appointed, there will be no room for any part time instructor in that institution. The respondents 2 and 3 are directed to take action accordingly to modify the existing scheme for appointment and allocation of posts of instructors on time scale of pay, to ensure that such appointment is made strictly with reference to seniority and not the accident of a person having been allowed to work against two posts of single part time instructors. When the Government considers any representation they should examine all the applications and merely act on the facts presented before them by the category or class or persons making the representations. The Government should show awareness of the fact that categories similarly placed will come forward with claims, even if they had not done so in the first instance and the Government decisions must be such that it should be applicable to all similarly placed persons based on proper norms and any inter se priorities should also be base d on proper norms.
Pending such re-examination and formulation of a policy to give due regard to seniority without reference to the fortuitous circumstances of a person being asked to work in two posts as double part time instructor, action with reference to the orders issued in G.O.Ms.No.712, Education Department, dated 28.5.1990 should be suspended. Any other sanction for regularisation of vocational teachers issued thereafter should also not be operated till a

decision is taken with reference to our directions in this order.

In another decision of the Tribunal in O.A.Nos.3646 of 1991 and 1999 of 1993, the Tribunal after extracting the aforesaid portion of the order of the Tribunal in O.A.No.3280 of 1992, made the following observation :-

 . . . These directions with reference to an earlier G.O. will be equally applicable to G.O.967 dt.16.10.92 relating to unqualified double part-time teachers also. There is no basis for giving priority to double part-time teachers over single part-time teachers without reference to seniority based on date of appointment and total service, because the appointment as double part-time teachers was a matter of accident and not on the decision based on seniority or selection. In any case unqualified teachers cannot in any case have precedence over qualified teachers even if working single part time. Accordingly the orders in paragraph 4 of the G.O.Ms.No.967, Education (HS3) Department dated 16.10.92 are set aside.

6. After the aforesaid decision of the Tribunal, the Government issued G.O.(RT)No.273 dated 7.4.1994 making certain interim arrangement and directed that 1387 double part time posts brought under regular time scale of pay were converted under lumpsum remuneration of Rs.900/- per month and continued upto 30.9.1994 and the Government sanctioned continuance of other single part time vocational instructors till the said period. It was indicated that the orders regulating the pay already drawn by the incumbents would be issued separately.

7. Soon thereafter, the Government issued G.O.Ms.No.834 dated 23.9.1994. Under the said G.O.Ms.No.834, the Government took a decision to regularise the qualified vocational instructors according to their seniority. So far as unqualified single and double part time instructors were concerned, the relevant portion is to the following effect :-

 (vi) The 1059 unqualified single and double part time vocational instructors shall be given appropriate training by the District Institutes of Education and Training and on completion of training appointed in secondary grade posts in the secondary Grade scale of pay, the Director of School Education shall evolve a suitable training programme in consultation with the Director of Teacher Education, Research and Training. Till such time, the unqualified double/ single part time vocational instructors shall be paid a consolidated pay at an enhanced rate of Rs.1000/- Rs.500/- p.m. respectively. During the period of training instructors will continue to draw the above remuneration.

. . .

7) The Director of School Education is also requested to ensure that all the 1059 unqualified part time instructors referred to under item (vi) of para 4 above are trained before the end of the academic year 1994-95 in consultation with the Director of Teacher Education, Research and Training.

As already indicated, the petitioners have challenged the aforesaid portion of

the Government Order.

8. It is not disputed that in the meantime the petitioners and other similarly situated persons have undergone the training and have been subsequently absorbed in the scale of pay applicable to secondary grade teachers.

9. The contention of the petitioners is to the effect that even though the petitioners were not fully qualified as per the qualification prescribed in G.O.Ms.No.1719, subsequently on the basis of the relaxation, which had been practically ratified by the Director in Proceedings dated 11.7.1984, such petitioners and other similarly situated persons have been working as vocational instructors. Subsequently they have also completed the training and thereafter discharging similar duty as other vocational instructors who have been regularised as per G.O.Ms.No.834 dated 23.9.1994. It is their contention that since the respondents had waived qualification clause and had granted exemption and since the petitioners are discharging similar duties, there is no justification to treat them on an inferior footing as compared to other vocational instructors. According to the petitioners such discriminatory action on the part of the respondents is required to be rectified.

10. Learned counsel appearing for the respondents have contended that the petitioners cannot claim equality with the fully qualified vocational instructors who were subsequently regularised on the basis of G.O.Ms.No.834 and in fact they have been regularised in the secondary grade scale of pay after completion of the training and subsequently another G.O has been issued to that effect which has not been challenged by such persons.

11. In 1998(6) Supreme 401 (FOOD CORPORATION OF INDIA ETC.ETC. v. OM PRAKASH SHARMA & OTHERS), the original FCI (Staff) Regulations provided for promotion to the post of Assistant Grade II from Assistant Grade III, Typist or Telephone operators having three years experience. The qualification for the post of Assistant Grade III was graduation, whereas for Typist and Telephone Operator it was matriculation. By Amendment, it was provided that three years experience was necessary for graduates, whereas five years experience was required for matriculates as eligibility criteria for promotion. Such amendment had been challenged by non-graduates. In the above context, the Supreme Court observed as follows :-

 . . . 16. There is no attempt made in the affidavit to show that the nature of the work in the posts of AG-I or AG-II was such that it requires higher efficiency which could be expected only from graduates and not from non-graduates. In other words, there is nothing in the said affidavit to establish a nexus between the amendments and the alleged object of higher efficiency in the promotional posts of AG-I or AG-II. In the counter affidavit filed by a non-graduate respondent in the writ petition as early as in October, 1996, it was categorically stated that the duties to be carried out by the persons holding the posts of AG-I and AG-II could be performed with equal efficiency by graduates as well as non-graduates. It was stated that the nature of the work in the two posts did not warrant a classification as

graduates or non-graduates. It was pointed out that all the posts of AG-I, AG-II and AG-III are clerical, non-selectional and non-managerial. Along with the counter affidavit, the job descriptions of the three posts was also filed as an annexure. A perusal thereof shows that the nature of the work is not such as to make differentiation between graduates and non-graduates. It is seen from the job descriptions that a person holding the post of AGIII could be assigned with the same work as required to be performed by AG-I and AG-II but under close and immediate supervision of the supervisor. The Typists and Telephone operators are also expected to perform other duties listed for AG-III as required by their superiors. It is true clear from the "job descriptions" that the duties performed by the typists and telephone operators as well as AG-III are similar in nature excepting that the typists and telephone operators are also attending to technical work on account of their technical qualifications. None of the above matters has been touched upon by the Corporation in the additional affidavit filed as late as in May, 1998. This aspect has been rightly commented upon by learned counsel of the non-graduates."

After referring to various decisions on such aspect, it was further observed :-
" . . . 29. An analysis of the aforesaid rulings shows that the validity of the classification has to be judged on the facts and circumstances of each case. We have already pointed out that in the facts of the present case no material has been placed before us by the Corporation to justify the amendments introducing a classification between graduates and non-graduates. We have also referred to the conduct of the Corporation which chose to accept the judgment of Andhra Pradesh High Court and implement the same on the basis of which the Board decided to withdraw the amendments and representations were made to that effect in the High Courts of Kerala and Madras. As stated earlier, even in the affidavits filed in this Court, the Corporation has referred to the decision of the Board to withdraw the amendments.
30. In such circumstances we hold that the amendments to the Regulations making a differentiation between graduates and non-graduates in the matter of promotion for the posts of AG-I and AG-II offend the equality clause and are therefore unconstitutional."

12. A perusal of various Government Orders issued from time to time indicates that when the "unqualified" vocational instructors have been inducted, the only question was regarding relaxation clause relating to qualification aspect. Even in G.O.Ms.No.1719 it was contemplated that as far as possible the persons fully qualified may be appointed. However, the said G.O., itself contemplated that in the absence of fully qualified persons, sufficiently experienced persons having experience in the concerned vocational course can be inducted. As a matter of fact, specific instruction on such line has been issued by the Director of School Education as per the proceedings dated 11.7.1984. The vocational instructors at that time were at par being paid the salary of remuneration of Rs.150/- or Rs.300/- depending upon the question as to whether they are "single part time vocational instructors" or "double part time vocational instructors".
Even subsequently under G.O.Ms.No.967 dated 16.10.1992, the double part time vocational instructors whether qualified or non-qualified were

treated on par save and except the condition that non-qualified double part time vocational instructors would be required to undergo training. Similarly under the very same G.O., the qualified and non-qualified single part time vocational instructors were treated alike save and except the condition that non-qualified single part time vocational instructors would be required to undergo training. However, the G.O., itself contemplated that after undergoing training, the double part time vocational instructors would be entitled to a regular scale of pay, obviously at par with double part time vocational instructors. In other words, on completion of training, such person should have been treated on par with fully qualified vocational instructor and the same was the situation as far it related to single part time vocational instructors vis-a-vis the unqualified single part time vocational instructors.

13. It is of course true that the Tribunal had subsequently held that there was no justification to treat the double part time vocational instructors from the single part time vocational instructors. But the fact remains that save and except the clause relating to undergoing of treatment, there was no practical difference between the qualified vocational instructors and non-qualified vocational instructors. There is also no dispute that the work-load of all persons is the same and all are required to take the same classes. There is no requirement that the vocational instructors who have been fitted in the secondary grade of scale are only required to take classes at a lower level and the qualified persons are required to take classes at a higher level. In other words, there is no distinction in the nature of work. As already noticed, at the time of initial recruitment there was no distinction in the nature of work nor there is any distinction in the amount payable to the persons concerned.

14. In view of the aforesaid, in our opinion, the ratio of the decision of the Supreme Court in 1998 (6) Supreme 401 (cited supra) is somewhat applicable. The condition regarding such unqualified teachers undergoing training itself does not appear to be arbitrary, but after such persons have undergone training, there cannot be any justification to treat them differently from other vocational instructors, who have been regularised in B.T. scale of pay.

15. For the aforesaid reasons, we are inclined to accept the main contention of the petitioners to the effect that they should be treated on par with other vocational instructors, particularly so, when they have completed the training.

16. The next question is as to whether the petitioners should be taken to be regularised with effect from the date on which the qualified double part time and single part time teachers have been regularised. In a separate decision relating to W.P.No.11389 of 2003 and batch, it has been directed that the qualified part time vocational instructors would be deemed to have been regularised with effect from the orders passed pursuant to G.O.Ms.No.712 dated 28.5.1990 and G.O. Ms.No.967 dated 16.10.1992, subject to certain modifications/ clarifications. However, it is noticed that the non-qualified vocational instructors had not separately made any grievance at

the time of issuance of G.O.Ms.No.712 and G.O.Ms.No.967. Moreover, in the present order, we have already observed that insistence of the Government that such unqualified persons would undergo training cannot be said to be arbitrary.

17. Having regard to all these aspects, we feel interest of justice would be served by passing the following directions :-

(i) "unqualified" vocational instructors who have been subsequently adjusted against secondary grade scale of pay on completion of their training, as envisaged in G.O.Ms.No.834 dated 23.9.1994, shall be deemed to have been regularised in B.T. scale of pay with effect from the dates of their regularisation in the secondary grade scale of pay and their seniority would be counted on the basis of such deemed date of regularisation.

(ii) Inter-se seniority of such persons shall be dependent upon their initial entry as part time vocational instructors, whether single or double.

(iii) Increments shall be calculated notionally from the deemed dates of their regularisation.

(iv) However, arrears on account of difference in the scale of pay and on account of notional increments are not payable and such persons shall be paid salary in B.T. Scale from the date of judgment only by taking into account the notional increments.

18. With the above directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed. No costs.

Index : Yes
Internet: Yes
dpk

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